

lapse of time or change of circumstances, or anything short of a fresh testamentary act on the part of the maker. This was the difficulty suggested by Lord Rutherford Clark in *Dobie's Trustees v. Pritchard*, 15 R. 2. But if the child born after the date of the will predeceases the testator, undoubtedly the will holds good; it is only the child's survivance of the father, or its being *in utero* at that date, that raises the plea. The true rule, as expounded in the later cases, seems to be that in either of these events, the law presumes that the testator did not intend his will to remain valid. There is thus no *punctum temporis* at which it is necessary to presume revocation, which of course must take place, if at all, during the life of the testator. If there were, it would be a strange result that the effect of the revocation should be done away with, and the will restored by something happening after the testator's death, in this case by the child dying without making a claim; for surely it must be ascertainable at a man's death whether he has died testate or intestate. But these difficulties are avoided if the will be held, in the absence of clear evidence to the contrary, to be affected from the first by the implied condition that it shall not remain valid if a child be subsequently born and be alive (or *in utero*) at the testator's death. And to that statement of the rule there is nothing illogical or contrary to principle in adding the further qualification that the challenge must be made by or for the child himself. Indeed it is in harmony with the principle underlying the whole rule, viz., that a father is under a natural obligation to make provision for a surviving child. But he is under no such obligation towards the child's representatives."

Counsel for the Pursuers and Real Raisers—Ralston. Agents—Adamson & Gulland, W.S.

Counsel for Claimant Miss Margaret Smith—W. Campbell. Agents—Adamson & Gulland, W.S.

Counsel for Claimant Mrs Grant—Christie. Agents—Simpson & Marwick, W.S.

Thursday, November 25.

FIRST DIVISION.

[Lord Pearson, Ordinary.]

MARTIN & COMPANY v. HUNTER.

Expenses—Trustee in Sequestration—Watching Fees—Precognitions.

Held that a trustee in a sequestration who is allowed watching fees in a petition for recal of the sequestration, is not entitled to the expenses of taking precognitions on his own account.

A petition was presented on 17th April 1897 by Mr Thomas Hunter, grocer, Lasswade, with the concurrence of Mr

Ormiston, a creditor, for sequestration of Mr Hunter's estates. A deliverance was pronounced by the Sheriff granting sequestration in terms of the prayer of the petition, and at a meeting of creditors, held thereafter, Mr Charles Romanes was appointed trustee in the sequestration.

A petition was presented by Messrs Martin & Company, wine merchants, Leith, who were creditors of Mr Hunter, craving the Court to recal the sequestration on the ground that the affidavit of the concurring creditor did not comply with the statutory requisites.

After a proof the Lord Ordinary (PEARSON) on 17th July 1897 refused the prayer of the petition, and found the petitioners liable to the trustee "for the expenses incurred by him in watching the case on behalf of the estate, and of attending the proof."

The petitioners reclaimed, and the Court adhered to the Lord Ordinary's interlocutor.

The reclaimers objected to the Auditor's report on the trustee's account of expenses, *inter alia*, in respect that he failed to tax off the expenses of "framing precognitions" amounting to £3, 6s. They maintained that these were not truly expenses of watching the case.

LORD PRESIDENT—This is a very small matter, but it is perfectly clear that when we allow watching fees we allow what is necessary to enable a trustee to be present at every stage, and to consider whether overt intervention is necessary. Accordingly I think that all the objections barring the first are bad. With regard to the first, I cannot see that the trustee is under the necessity of framing precognitions on his own account. Under the statute he has full opportunity for obtaining information from individuals associated with the affairs of the bankrupt, and has no occasion for precognitions in a case when he has merely to watch.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court sustained the objections so far as they related to the expenses of framing precognitions.

Counsel for the Petitioners—T. B. Morrison. Agent—Marcus J. Brown, S.S.C.

Counsel for the Trustee—Findlay.

Tuesday, November 30.

SECOND DIVISION.

[Lord Pearson, Ordinary.]

LEITH DOCKS COMMISSIONERS *v.*
MAGISTRATES AND COUNCIL OF
LEITH.

Burgh—Magistrates and Council—Powers—Costs of Opposing Bill in Parliament—Application of Public Health Assessments—Public Health (Scotland) Act 1867 (30 and 31 Vict. c. 101), sec. 95.

The Public Health (Scotland) Act 1867 by section 95 authorises the local authority to impose assessments to meet the expenses incurred by them "in executing this Act."

The City of Edinburgh introduced into Parliament a bill, the purpose of which was, *inter alia*, to have the burgh of Leith amalgamated with and made part of the city. The Magistrates and Council of Leith successfully opposed the amalgamation.

Held that they were not entitled to charge the expenses incurred by them in opposing the amalgamation upon the assessment levied by them as Local Authority under the Public Health Acts.

Statute—Interpretation of Statute—Whether Applicable to Scotland—Municipal Corporations (Borough Funds) Act 1872 (35 and 36 Vict. c. 96).

Opinions (per Lord Justice-Clerk and Lord Pearson) that the Borough Funds Act 1872, enabling governing bodies in certain cases to apply the funds or rates under their charge in promoting or opposing bills in Parliament, applies to Scotland.

In November 1896 the Commissioners for the Harbour and Docks of Leith, incorporated by "The Leith Harbour and Docks Act 1875," presented a note of suspension and interdict against the Magistrates and Council of the Burgh of Leith as such, or as coming in place of and as representing The Commissioners of Police of the Burgh of Leith, acting under the Burgh Police (Scotland) Act 1892, and as Local Authority under the Public Health Act 1867, and Acts amending or extending the same. The complainers prayed the Court "to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents from assessing, demanding, and levying, or proceeding to carry out a resolution by them to assess, demand, or levy, under or in virtue of the Public Health Acts, any rate or assessment on the properties of the complainers within the said burgh, or on any rental or valuation thereof, to be applied directly or indirectly in or towards payment, in whole or in part, of the expenses incurred by the respondents in or connected with opposition by them to or in connection with the bill promoted by the corporation of the

city of Edinburgh, in the session of Parliament 1896, for the extension of the boundaries of said city, and the amalgamation of the burghs of Leith and Portobello therewith, or in or towards payment of money borrowed, or to borrowed by them, for the purpose of paying said expenses."

The following epitome of the circumstances of the case and the contentions of parties is taken from the note to the interlocutor of the Lord Ordinary (PEARSON):—"In the Parliamentary Session of 1896 the Corporation of Edinburgh promoted a private bill for the extension of the boundaries of Edinburgh, which became the Edinburgh Extension Act 1896. As originally presented, it proposed to extend the boundaries of Edinburgh over Leith, Portobello, and a considerable area of the county. Various petitions were lodged by opponents of the bill; and, among others, a petition by the Provost, Magistrates, and Council of the Burgh of Leith, objecting to the inclusion of Leith, for reasons fully stated in the petition. The Committee of the House of Commons, without calling on the Leith authorities to lead evidence, sustained their objection to amalgamation, and Leith was dropped from the bill, together with a part of the county lying to the eastward of it.

"There remained, so far as Leith was concerned, only certain questions as to a portion of the county territory lying to the west amounting to about 122 acres, upon part of which Leith had recently erected a fever hospital at a cost of about £50,000. Leith desired this territory to be excluded from the bill and to remain in the county, mainly on the ground that, looking to the effect of the bill otherwise, this was the natural and indeed the only direction in which Leith could extend. Mainly on this ground Leith followed the bill to the House of Lords, but unsuccessfully. There were, however, certain amendments added to safeguard the position of Leith, as regards the fever hospital and the sewer connected with it.

"The parliamentary opposition cost the Magistrates and Council of Leith about £3500, by far the larger part of which was the cost of the proceedings in the Commons. They have now, acting as the Public Health Local Authority, resolved to pay the whole of this sum out of the Public Health Assessment, in equal instalments over a period of five years; and they have added to their Public Health Estimate for the year current when this note was presented, a sum of £700 in pursuance of that resolution.

"The Leith Harbour and Dock Commissioners now seek to have the Corporation interdicted from carrying out that resolution. The Commissioners are statutory owners of the harbour and docks of Leith, as well as some small properties outside the harbour and docks; and their valuation amounts to a sixth or a seventh of the entire valuation of the burgh. They stand in this peculiar position, that while they are liable to be assessed on the harbour and docks for public health purposes, they are by statute exempt from the Burgh